

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(ALEXANDRIA DIVISION)**

IN RE CAPITAL ONE CONSUMER)	
DATA SECURITY BREACH LITIGATION)	MDL No. 1:19-md-02915 (AJT)(JFA)
)	
_____)	
)	
This Document Relates to ALL Cases)	

**GITHUB INC.’S RESPONSE TO THE APPLICATION OF SABITA J. SONEJI
TO SERVE ON PLAINTIFFS’ STEERING COMMITTEE**

GitHub Inc. (“GitHub”) submits the following response to the Application of Sabita J. Soneji To Serve On Plaintiffs’ Steering Committee (the “Application”), Dkt. 114, to address certain mischaracterizations about GitHub’s involvement in the data breach at issue.

The Application states that GitHub played a “role ... in allowing broad distribution of the sensitive private data disclosed by Capital One.” (*Id.*) The Application goes on to repeat that “private data” was “sitting” on GitHub’s platform. (*Id.*) These statements are false. The file allegedly posted by Paige Thompson on GitHub on April 21, 2019, in fact contained no personally identifiable information (“PII”) of any kind involving any Capital One customer. Moreover, GitHub promptly removed the file when it received a takedown request from Capital One. Counsel in the Application is aware of these facts.

As background, only two out of the sixty one complaints consolidated in this action name GitHub as a defendant—the *Aballo* action filed by Ms. Soneji, C.A. No. 1:19-cv-02929 (N.D. Cal.), and the *Ababseh* action filed by other counsel, C.A. No. 2:19-cv-1397 (W.D. Wash.).¹ Shortly after the matters were filed, GitHub’s counsel contacted plaintiffs’ counsel in these two outlier matters to explain why their allegations about GitHub were wrong. On August 20, 2019, GitHub’s counsel conferred with Ms. Soneji by phone, explaining that the file posted on GitHub contained no PII and requesting that she reconsider her decision to name GitHub as a defendant

¹ The *Ababseh* action was filed on August 30, 2019, but has not been served on GitHub.

in the *Aballo* complaint.² Ms. Soneji did not ask for verification of that fact, but had she done so, GitHub would have allowed her to confidentially view the file to see for herself that it includes no PII. GitHub did precisely this in response to outreach from Rosemary Rivas, who seeks to serve as Plaintiffs' Lead Counsel in these proceedings. *See* Dkt. 149. As noted in Ms. Rivas's application, GitHub allowed her to confidentially view the file to confirm that it contains no PII of any Capital One customer.

While GitHub defers entirely to the Court's judgment in selecting Plaintiffs' Lead Counsel and the members of the Plaintiffs' Steering Committee, it believes that the continuing misstatements made in the Application—in the face of directly contrary facts made available to counsel—raise serious questions about Ms. Soneji's investigation of the claims at issue and her ability to work cooperatively with other counsel in this matter.

² Plaintiff's counsel in *Ababseh* has not responded to GitHub's attempts to confer.

Dated: November 25, 2019

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CERTIFICATE OF SERVICE

I certify that on November 25, 2019, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF System, which will then send a notification of such filing (NEF) to counsel of record.

/s/ Scott W. Stemetzki
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